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September 19, 2003

Mr. Thomas M. Dorman  
Executive Director  
Public Service Commission  
211 Sower Boulevard  
P.O. Box 615  
Frankfort, KY 40602

**RECEIVED**

SEP 19 2003

PUBLIC SERVICE  
COMMISSION

RE: Communications Workers of America and Local 463,  
International Brotherhood of Electrical Workers v. Kentucky  
ALLTEL, Inc., Administrative Case No. 2003-00190

Dear Mr. Dorman:

Enclosed is the Response as required by the Commission Order dated August 20, 2003, of Kentucky ALLTEL, Inc. in the above-referenced case. An original and eleven (11) copies are enclosed. Please file-stamp the extra copy and return it to me in the self-addressed, pre-stamped envelope I have enclosed for your convenience.

Thank you for your cooperation in this matter. Please do not hesitate to contact me with any questions you may have.

Sincerely,

WYATT, TARRANT & COMBS, LLP

Noelle M. Holladay

Enclosure

Response (original and 11 copies)

cc: Steve Rowell (w/enclosure)  
Robert Priebe (w/enclosure)  
Kimberly K. Bennett (w/enclosure)  
James H. Newberry, Jr. (w/o enclosure)

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COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

**RECEIVED**

SEP 19 2003

In the Matter of:

PUBLIC SERVICE  
COMMISSION

COMMUNICATIONS WORKERS OF AMERICA AND )  
LOCAL 463, INTERNATIONAL BROTHERHOOD )  
OF ELECTRICAL WORKERS )

COMPLAINANTS )

v )

KENTUCKY ALLTEL, INC. )

DEFENDANT )

CASE NO. 2003-00190

**RESPONSE OF KENTUCKY ALLTEL, INC.**

COMES Kentucky ALLTEL, Inc. ("ALLTEL") and for its Response as required by the Commission Order dated August 20, 2003, states the following:

1. On May 29, 2003, the Complaint was filed by the CWA and the IBEW ("Complainant(s)"). Thereafter, the Kentucky Public Service Commission ("Commission") issued its Order to Satisfy or Answer on June 5, 2003, a copy of which was subsequently served on ALLTEL. ALLTEL filed a Motion to Dismiss and Answer on June 16, 2003. The Commission, by order dated August 20, 2003, required the parties to file, within 30 days, "any and all information regarding the status of the parties positions on each of the alleged violations". This Response is timely filed within thirty (30) days of the date of the order.
2. As reflected below, with respect to each of the matters addressed in the Complaint, the Complainants have either failed to bring a timely grievance under the Labor Agreement and are now barred by the Labor Agreement from pursuing a grievance or they have chosen or been directed by the NLRB to resolve the issue through the grievance process of the Labor Agreement. The Labor Agreement

sets forth a detailed procedure that initially requires the parties to negotiate issues as a grievance through a series of meetings between company representatives and the complaining party in an attempt to resolve an issue. If the grievance process fails to resolve the issue and either party desires to continue the dispute, then the issue must be referred to mandatory arbitration before an independent third party, selected in accordance with the provisions of the Labor Agreement.

<b>Issue</b>	<b>Status</b>
Phone Marts	No grievances, requests for arbitration or NLRB action was filed by employees or the Complainant.
Living Benefit Insurance	No grievances, requests for arbitration or NLRB action was filed by employees or the Complainant.
Medical Plan Availability	No grievances, requests for arbitration or NLRB action was filed by employees or the Complainant.
Team Incentive Program	NLRB charge withdrawn by Complainant. Grievance in process.
Contract Labor	NLRB Charges withdrawn by Complainant or deferred by NLRB to grievance and arbitration process.
Personal Lines of Insurance	No grievances, requests for arbitration or NLRB action filed by employees or Complainant.
Grievance Procedures	NLRB charges withdrawn by Complainant. No grievance or arbitration request was filed.

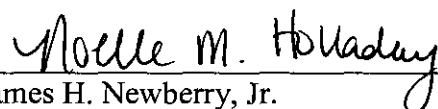
3. Attached to ALLTEL's initial Response as Exhibit 1 was a response to each of the issues raised in the Complaint. A revised Exhibit 1 is attached to this response and reflects a more detailed and updated status and response to the issues that are the subject of the Complaint.

4. As ALLTEL initially responded, K.R.S. §§ 278.020, 278.040, and 278.260 clearly set forth that the Commission's jurisdiction extends only to rates or services. The Complaint contains no allegation with respect to ALLTEL rates or services and therefore this matter is not properly before this Commission. Additionally, the allegations of the Complaint are not properly before this Commission because they are, in several instances, and should be in the other instances, the subject of timely grievances or charges

presented to ALLTEL or the NLRB. Others, were subject to the mandatory arbitration requirements of the Labor Agreements, which have not been pursued. Article 12 of the CWA Labor Agreement provides that if the "Union and the Company fail to settle by negotiations any difference or dispute between them arising out of, pertaining to, or involving the interpretation, ... application, performance, or operation of any of the provisions of any contract, such grievance, difference or dispute shall be referred to arbitration upon request to the Company by the Union." Furthermore, because the allegations of the Complaint would require the interpretation or enforcement of collective bargaining agreements (which have now expired and are not enforceable), the issues are preempted by federal law. State law claims, which would require a state court to interpret collective bargaining agreements, are preempted by the Labor Management Relations Act. (See *Textile Workers v. Lincoln Mills*, 353 U.S. 448 and *Building Trades Council v. Garmon*, 359 U.S. 236).

Wherefore, ALLTEL prays the Complaint be dismissed with prejudice or any relief requested in the Complaint denied, and for all other relief to which it is entitled.

Respectfully submitted,



James H. Newberry, Jr.

Noelle M. Holladay

WYATT, TARRANT & COMBS, LLP

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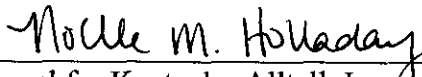
859.233.2012

Counsel for Kentucky Alltel, Inc.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was served by first class mail, postage prepaid, on this 19<sup>th</sup> day of September, 2003:

Robert M. Weaver  
Nakamura, Quinn & Walls, LLP  
2100 First Avenue N, Suite 300  
Birmingham, AL 35203

  
\_\_\_\_\_  
Counsel for Kentucky Alltel, Inc.

## **EXHIBIT 1**

ALLTEL Response to Declarations of Judy Dennis and Johnny Hunt initially Provided in its Motion to Dismiss.

Supplemental Responses are in ***BOLD and ITALICIZED***.

1. Phone Marts (retail stores) - Until the receipt of the Complaint, ALLTEL reasonably believed that the parties had reached agreement with respect to the changes ALLTEL implemented regarding retail stores. ALLTEL fulfilled the provisions of the agreement which it believes it reached with Complainant on this issue (which in no way relates to ALLTEL's rates or services), and Complainants have not protested, complained, filed a grievance or otherwise made known disputes with respect to the retail store changes until the filing of the Complaint.

***SUPPLEMENTAL RESPONSE: Pursuant to Article 11 of the CWA Labor Agreement, any grievances should have been presented "within thirty (30) calendar days" after its alleged occurrence was known. Complainants should have presented their grievances on this issue no later than April 20, 2003. Complainants have not filed a grievance or otherwise made known any formal dispute with respect to the retail store changes until the filing of the Complaint on May 29, 2003. Likewise there has been no allegation or showing of harm to any employee because of the revision to job classifications.***

2. Living benefit - The "living benefit" was a feature unique to a Verizon life insurance policy that ALLTEL was not able to continue after the acquisition and which again does not pertain to ALLTEL's rates or services. ALLTEL did not succeed to Verizon's rights under the policy. This situation was known by the Complainants prior to the closing, but more importantly, this issue is moot and irrelevant because the memorandum of agreement (MOA) that addressed the living benefit expired and no employee apparently sought and was denied the use of this benefit prior to the expiration of the MOA. Further, the MOA provides that "all the terms and conditions" relating to the

benefit “shall be determined by and at the sole discretion of the Insurance Carrier”. The carrier, in its discretion, decided to not allow ALLTEL to continue the benefit.

**SUPPLEMENTAL RESPONSE:** *This situation was known by the Complainants prior to the closing in 2002. Complainants have not filed a grievance or otherwise made known any formal dispute with respect to the unavailability of “living benefits” until the filing of the Complaint on May 29, 2003. Pursuant to Article 11 of the CWA Labor Agreement, any grievances should have been presented “within thirty (30) calendar days after” its alleged occurrence was known. There is no allegation or record of any employee seeking or being denied the use of this benefit prior to the filing of the Complaint. Likewise there is no allegation or evidence of harm to any employee because this option is no longer available.*

3. Medical Plan availability - The Complaint asserts correctly that the only requirement of the Labor Agreements was for an 80/20 indemnity plan. While Verizon offered other plans, it was not required to do so, and, therefore, ALLTEL was not required to do so either. As required by the Labor Agreement, ALLTEL offered an 80/20 indemnity plan, but the Complainants, in their sole discretion, opted to accept another plan, the nationwide PPO. ALLTEL fulfilled all of its obligations. Moreover, Complainants knew what forms of health care benefit would be available well over six months ago, and had not formally complained until filing of the Complaint.

**SUPPLEMENTAL RESPONSE:** *Effective with the transfer of property from Verizon to ALLTEL on August 1, 2002, Complainants knew what forms of health care benefit would be available and have not filed a grievance or formally complained until filing of the Complaint on May 29, 2003. While Verizon offered other plans, it was not required by the Labor Agreements to do so, and, therefore, ALLTEL was not required to do so either. Additionally, although not required to provide any plan other than an 80/20 indemnity plan, ALLTEL did attempt*

*unsuccessfully to negotiate with its carrier to continue some of the Verizon type plans. Moreover, ALLTEL has offered and the Complainants accepted another plan, the ALLTEL Preferred Provider Option (PPO). Therefore, ALLTEL exceeded the requirements of the Labor Agreement. Again, pursuant to Article 11 of the CWA Labor Agreement, any grievances should have been presented "within thirty (30) calendar days after" its alleged occurrence was known. Any complaint on this issue is therefore without merit and untimely.*

4. Team Incentive Program - ALLTEL continued this Verizon program. While the relevant MOA indicates that the payment will be made "normally ... by mid-April", this phrase does not impose an absolute deadline and is preceded by the indication that it will be paid "as soon as practicable after the calendar year results are known". In this first year following the closing and the transition from Verizon to ALLTEL, when ALLTEL is still refining the prior calendar year results, it should be understood that although ALLTEL did not pay in April, its payment one month later in May, is reasonable, allowed and contemplated by the MOA. As to how the payment is calculated, while ALLTEL has tried to replicate the Verizon calculation, the MOA provides "However, the Company does reserve the right to make modifications if such are deemed necessary" and with respect to identified measures that the measures "and the method of their calculation are subject to modification by management." Significantly, the Complaint indicates that these issues are subject to pending grievances and charges to the NLRB. While ALLTEL denies they have merit, they are being pursued through the forums and procedures specified in the Labor Agreements.

*SUPPLEMENTAL RESPONSE: The Memorandum of Agreement reads "... disputes arising from the payment in accordance with the terms of the plan are subject to the grievance and arbitration procedure." The Complaint stated that these issues were subject to pending grievances and charges to the NLRB. Subsequent to the filing of the Complaint, the Complainant, however,*



*withdrew the NLRB charge. A grievance is being processed in accordance with the Labor Agreement.*

5. Contract Labor - The Complaint indicates that the contract labor issues are the subject of pending grievances in accordance with the provisions of the Labor Agreements. Again, while ALLTEL denies the grievances have merit, those proceedings, required by the Labor Agreements, have not been exhausted.

***SUPPLEMENTAL RESPONSE:*** *All pending charges relative to this issue filed with the National Labor Relations Board have been subsequently withdrawn by the Complainant or deferred by the NLRB to the grievance and arbitration process.*

6. Personal lines of insurance - This issue can be answered simply by referring to the relevant MOA. Paragraph 3 of the MOA provides, "The Company reserves the right at any time, and from time-to-time, to modify or amend in whole or part, any and all provisions of the agreement with the Insurance Carrier, to change Insurance Carriers, or to terminate the agreement with the Insurance Carrier." It was known by the Complainants prior to closing that the relevant policy and this benefit were not transferable to ALLTEL from the Verizon policy and that, in any event, the policy was terminable at ALLTEL's discretion. No grievance or charge was made by Complainants until the filing of the Complaint, and the issue is not properly included therein as it does not pertain to ALLTEL's rates and service.

***SUPPLEMENTAL RESPONSE:*** *Pursuant to Article 11 of the CWA Labor Agreement and Article 2 of the IBEW Labor Agreement, any grievance should have been presented "within thirty (30) calendar days" after its alleged occurrence was known. No grievances were presented on this*

***issue with the National Labor Relations Board and there has been allegation or showing of harm to any employee.***

7. Grievance procedures – Complainants’ allegations are that ALLTEL is not abiding by the procedures of the contract with respect to grievances, including timely decisions. While the Complainant alleges that ALLTEL has not followed the provisions of the contract, Complainants have conveniently ignored the language of the same contract. The Labor Agreement specifies procedures to be followed by them, such as arbitration, in order to escalate a grievance, including the failure to timely decide a grievance.

***SUPPLEMENTAL RESPONSE: All pending charges relative to this issue that were filed with the NLRB have been subsequently withdrawn by the Complainant and no grievance was presented.***